IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1255 of 1982

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHOGAJI KUNVARJI VANZARA

Versus

ABDULREHMAN MOHMAD USMAN BASTAWALA DECD THRO HIS HEIRS

Appearance:

1. Civil Revision Application No. 1255 of 1982

MR KV SHELAT for the Petitioner

MR DF AMIN for Respondent No. 1-1/3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/09/2002

ORAL JUDGEMENT

This Revision Application preferred under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947 (hereinafter referred to as 'the Rent Act') arises from the judgment and order dated 14th April, 1985 passed by the learned Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.59/1979. The petitioner before this Court is the appellant - defendant.

The respondent - plaintiff instituted H.R.P. Suit No.1809/1974 in the Court of Small Causes, Ahmedabad for recovery of the possession of the suit premises. The suit premises is a room situated in 'Karim Sheth Dela' at Railwaypura, Ahmedabad, bearing City Survey No.575 Part-6 and Municipal Census No.493-C-6. The plaintiff claimed that the suit premises was leased to the defendant on rent at the rate of Rs.15=00 per month. The defendant was in arrears of rent and had also sublet the suit premises to a third party. Hence, the suit.

The suit was contested by the defendant by filing written statement (Ex.13). The defendant denied that he was in arrears of rent or that he had sublet the suit premises. The defendant also denied that the plaintiff was his landlord and challenged the maintainability of the suit. The learned trial Judge was, under the judgment and order dated 12th January, 1979, pleased to hold that the defendant had sublet the suit premises and had denied the title of the plaintiff over the suit premises and thereby forfeited his right to protection under Section 12(1) of the Rent Act. The learned trial Judge was of the opinion that the defendant was ready and willing to pay the rent.

Feeling aggrieved, the defendant preferred Civil Appeal No.59/1979 before the Appellate Bench of Small Causes Court, Ahmedabad. The Appellate Bench held that the act of subletting by the defendant was not proved, however, was pleased to hold that the defendant by denying the title of the plaintiff had incurred liability of eviction. The appeal was accordingly dismissed under the impugned judgment and order dated 14th April, 1982. Feeling aggrieved, the defendant has preferred the present Revision Application.

The only question that arises in the present Revision Application is whether the defendant can be said to have denied the title of the landlord disentitling him protection under the Rent Act.

The facts established are : (1) the suit premises is a room of kachcha construction situated within 'Karim Sheth Dela'; (2) the land belongs to the

State Government; (3) the land was given to Karimbhai on lease for construction; (4) the said Karimbhai had put up kachcha constructions which were given on lease to various persons; (5) the suit premises was given on lease to the defendant; (6) the said leasehold right of the said Karimbhai was transferred to the plaintiff somewhere in the year 1962; and (7) since the year 1962 the defendant's tenancy was attorned by the plaintiff and the defendant had been paying the rent to the plaintiff.

Thus, relationship of landlord and tenant between the plaintiff and the defendant has been established.

Mr.Shelat has submitted that initially the Government had given the land on lease to Karimbhai for a period of 10 years. On expiration of the period of lease the same was not extended further. Even the plaintiff, after the alleged purchase of the leasehold right of the said Karimbhai, had some dispute with the Government in respect of the lease of the land. He has also submitted that the transfer of the leasehold right of the said Karimbhai has not come on record. The defendant had rightly questioned the ownership of the landlord i.e. the plaintiff. He has submitted that for such bonafide inquiry made by the defendant, the defendant can not be said to have denied the title of the plaintiff which should entail the order of eviction. In support of his argument, Mr.Shelat has relied upon the judgments in the matters of J.J.LAL PVT.LTD. AND ORS. V/S. M.R.MURALI AND ANR. [(2002)3 S.C.C. 98]; of GULAMMINYA HASUMINYA DECD. THROUGH HIS HEIRS V/S. SAKHAVATKHAN MOHMADKHAN DECD. THROUGH LEGAL HEIRS [2001(2) G.L.R. 1068] and of GANDABHAI RANCHHODJI GANDHI V/S. NOSHIR KAVASJI SABAWALA AND ORS. [1993(1) G.L.R. 238].

The learned advocate Mr.Amin has contested the Revision Application. He has submitted that not only the defendant questioned the title of the landlord. He went further to establish the same in himself. The tenancy of the defendant was attorned. The defendant had been paying the rent to the plaintiff for some 12 years. There was no legitimate ground which should entice the petitioner to question the title of the plaintiff. The defendant is, therefore, rightly ordered to evict the suit premises. Mr.Amin has relied upon the above referred judgment in the matter of GULAMMINYA HASUMINYA and of SUBHASH CHANDRA V/S. MOHAMMAD SHARIF AND ORS. [1990(2) G.L.R. 865].

In the matter of J.J. Lal Pvt. Ltd. (supra), the Hon'ble Supreme Court has held that the burden lies

on the landlord to adduce evidence substantiating his allegation that the tenant denied his title and such denial was not bonafide. Mr.Shelat has particularly relied upon paragraph 18 of the judgment. In the said paragraph, the Hon'ble Supreme Court has held that, "..As a general rule the vulnerability of denial of title by the tenant shall be tested by reference to the rule of estoppel contained in Section 116 of the Evidence Act which estops the tenant from denying the title of the landlord at the commencement of the tenancy and the estoppel continues to operate so long as the tenant does not surrender possession over the tenancy premises to the landlord who inducted him in possession. The tenant is not estopped from denying the title of the landlord if it comes to an end subsequent to the creation of the tenancy nor is he stopped from questioning the derivative title of a transferee of his landlord."

On the facts of the said case, the Hon'ble Supreme Court found that the tenant had not disowned the title of the landlord at the inception of tenancy nor the tenant setup title in himself nor attorned in favour of the Municipal Corporation by voluntarily entering into direct tenancy with the Municipal Corporation bypassing the landlord. The Hon'ble Supreme Court, therefore, was of the opinion that no case of eviction on the ground of tenant's denial of landlord's title being "not bonafide" was made out.

In the matter of Gulamminya Hasuminya (supra), this Court had an occasion to examine the question of eviction on the ground of denial of title. In paragraph 21 of the judgment the Court observed that, "..There is no estoppel therefore against tenant to deny title of his landlord at some time prior to the commencement of tenancy or to deny title of property in interest of landlord. The words "at the beginning of the tenancy" in Section 116 of the Evidence Act ought not to be construed in a limited way. A new tenancy may begin though tenant has been in possession prior to the tenancy. It may begin by granting of a lease by a landlord or it may begin attorning to a new landlord."

In the matter of Gandabhai Ranchhodji Gandhi (supra) also, this Court had an occasion to examine the order of eviction made on the ground of denial of title. Relying upon the judgment of the Hon'ble Supreme Court in the matter of Subhash Chandra v/s. Mohammad Sharif (supra), the Court in paragraph 17 of the judgment observed that, "the application of rule embodied in Section 116 of the Evidence Act would not be confined in

its application to cases where original landlord brings action for eviction. Section 16 is not exhaustive of the law of estoppel. Therefore, a transferee from such a landlord also can claim the benefit, but that will be limited to the question of title of the original landlord at the time when the tenant was let in. The tenant is entitled to show that the plaintiff has not as a matter of fact secured a transfer from the original landlord or that the alleged transfer is ineffective for some other valid reason, which renders the transfer to be non-existent in the eye of law. Tenant in such a case can attack the derivative title of the transferee-plaintiff but not on the ground that the transferor-lanlord who had initially inducted him in possession did not have the right to dispose of the property. Moreover, since the impediment in the way of a tenant to challenge the right of the landlord is confined to the stage when the tenancy commenced, he is not forbidden to plead that subsequently the landlord lost his right. These exceptions, however, do not relieve the tenant of his duty to respect the title of the original landlord at the time of the beginning of the tenancy."

On the facts of the said case, the learned Judge was of the opinion that the defendant had not denied the title of the landlord. The tests applied were : (1) the defendant had never claimed the title in himself; (2) he had not renounced or disputed the character of his possession as that of a tenant; and (3) he had not clearly, expressly or unequivocally denied the title of the plaintiff, but had merely called upon the plaintiffs to prove their title and ownership. The plaintiffs were not the original owners who had put the defendant in possession nor were the purchasers from the persons who inducted the defendant in the suit property.

In the matter of Subhash Chandra (supra), Mr.Amin has particularly relied upon the quote reproduced from the judgment in the matter of Kumar Krishna Prasad Lal Singha Deo v/s. Baraboni Coal Concern Ltd. (A.I.R. 1937 P.C. 251), which reads as under :

"What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself discloses the defect of the title. The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, e.g. by

> attornment, acceptance of rent, etc. In this sense it is true enough that the principle only applies to the title of the landlord who "let the tenant in" as distinct from any other person claiming to be reversioner. Nor does the principle apply to prevent a tenant from pleading that the title of the original lessor has since come to an end."

Mr.Shelat has strenuously urged that the estoppel contained in Section 116 of the Evidence Act is limited to the landlord who inducts the tenant i.e. the tenant can not deny the title of a person who inducts the tenant in possession, and that too, on the date of the commencement of the tenancy. There is no bar against the tenant questioning the title of a person who claims to have derived the same from the original landlord. In the present case, admittedly the plaintiff derived the title from the original landlord Karimbhai. The plaintiff, therefore, can not claim eviction on the ground of denial of title. Whereas, Mr.Amin has submitted that even in a case of derivative title once the tenant attorns to the tenancy and starts paying rent to the new landlord he is estopped from questioning the title of such landlord.

As recorded hereinabove, it is undisputed that the land belongs to the State Government. The original landlord Karimbhai was the lessee of the State Government. He constructed the super-structures and let out such structures to the tenants. The defendant being one of them, the plaintiff purchased the leasehold right of the said Karimbhai some time in the year 1962. The plaintiff, thus, stepped into the shoes of the original landlord Karimbhai and became entitled to recover rent from the lessees. The tenancy was attorned. Even the defendant accepted the plaintiff as his landlord and went on paying rent to the plaintiff since the year 1962. The suit for recovery of possession was also initially based on the grounds of arrears of rent and subletting i.e. until the date of the suit the defendant never questioned the title of the plaintiff over the suit land. There was no reason or change in circumstance which should create a doubt as regards the title of the plaintiff over the suit premises. Nonetheless, the defendant not only questioned the title of the plaintiff, he also claimed the same in himself i.e. in the written statement the defendant took the plea that the plaintiff was not the landlord of the land and the super-structure and, that the plaintiff had no right to sue. The defendant also said that the super-structure was constructed by the defendant at his own cost. Thus, the defendant tried to claim ownership

of the super-structure. As held by the Privy Council in the above referred judgment in the matter of Kumar Krishna Prasad Lal Singha Deo, the attornment of the tenancy and payment and acceptance of rent by the defendant and the landlord would preclude the tenant from questioning the title of the landlord eventhough such title is derived from the original landlord. In my opinion, in the present case, the tenancy having been attorned, there was no occasion for the defendant to question the title of the landlord. The denial of the plaintiff's title by the defendant was obviously with a view to avoiding decree for possession on the grounds of arrears of rent and subletting. The said denial, therefore, can not be said to be bonafide. Thus, both the Courts below have rightly held that the defendant was liable to be evicted from the suit premises on the basis of the estoppel embodied in Section 116 of the Indian Evidence Act.

In the result, the petitioner fails. The Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

Learned advocate Mr.K.V.Shelat requests that the ad-interim stay be continued for a period of 8 weeks. Request is granted. The ad-interim stay shall continue till 1st December, 2002, on the same terms and conditions.

(Ms. R.M. Doshit, J.)

/sakkaf